

Drawing Amendments:

In response to Examiner's election requirement, Applicant has canceled figure 3A. Figure 3B has been relabeled as Figure 3 and now incorporates a winch instead of a hydraulic ram in response to examiner's election requirement. The replacement drawing is attached hereto. Applicant has withdrawn all of the claims with a tines stanchion so that the drawings now show every feature of the invention that is specified in the claims.

REMARKS

Claims 1-25 were pending in the application. Claims 1-6, 9-12, and 14-18 are rejected. Applicant has withdrawn claims 7, 8, 13, and 19-25 in response to Examiner's election requirement. Additionally, figure 3A has been removed in response to examiner's election requirement. Figure 3B has been renamed to "figure 3" and has been modified in accordance to examiner's election requirement. With reference to examiner's comments, Applicant has elected species A (headache rack winch embodiment) and subspecies C (hay bale stabilizer with squeeze bars).

Claim Objections

Examiner objected to claim 1 due to informality. In making the objection, examiner stated:

"claim 1, line 4, is missing "a" after "engaging".

Applicant has amended claim 1 to include an "a" after "engaging" in accordance with examiner's suggestion.

35 U.S.C. § 112

Examiner has rejected claims 1-6, 9-12. and 14-18 under 35 U.S.C. § 112 as failing to comply with the written description requirement. In making the rejection, examiner stated:

The claims are directed to a hay bale retriever/stacker but there is no explanation of how the bales are stacked nor is there any explanation of how bales are placed on or removed from the hay engagement portion. There is no structure disclosed that is capable of doing the actual loading and removal to/from the hay engagement portion 40.

Claim 9 states "a dolly mounted on the hay engagement portion, wherein the dolly is capable of sliding from the first position to the second position to load and unload hay bales." The drawings and specification clearly show that the dolly 41 cannot move from first position 22 to second position 21. The dolly can only move from its starting position to near position 22. For sake of examination it is assumed the applicant meant the dolly could move toward position 22 only.

Bales may be unloaded from the hay engagement portion by utilizing the hydraulic lifts (38 and 39). The lifts tilt the engagement portion so that the hay bales slide off of the dolly 41 to complete the unloading process. To load bales onto the hay engagement portion, the vehicle to which the trailer T is attached may be backed into the bales or the bales may be loaded manually using conventional means known in the art. Applicant has amended the specification to elucidate these processes.

Bales are stacked during the unloading process as described in paragraph 34 on p.4 of the application. When the bales are fed through the stabilizer by the headache rack, they are fed sequentially to the tilt bed. When the tilt bed is moved to its vertical position, the bales are in a stack. Applicant has amended the specification to elucidate the stacking process.

With respect to claim 9, examiner correctly assumed that the dolly 41 cannot move from position 22 to position 21. The dolly may only move from its starting position to a second position at the entrance of the hay stabilizer. Claim 9 has been modified to eliminate any ambiguity with respect to this matter.

35 U.S.C. § 102

Claims 1, 2, 10-12 are rejected under Graham

The examiner has rejected claims 1, 2, and 10-12 as being anticipated by Graham (U.S. 3,478, 898). In making the rejection, examiner stated:

Re claim 1, Graham teaches a hay bale retriever/stacker 10, comprising:
A static bed 13, having a front end and a rear end;
A tilt bed 12, mounted at the rear end of the static bed;
A hay engagement portion 23, 24, mounted on the tilt bed, for engaging hay bale during retrieval;
a headache rack (66, 32, or 33), slidably mounted on the static bed 13, capable of sliding from a first position proximate to the rear end of the static bed to a second position proximate to the front end of the static bed; and

a hay bale stabilizer (66, 32, 33), disposed on the static bed proximate to the rear end of the static bed to stabilize the hay bale.

Re claim 2, Graham teaches at least one hydraulic ram 29 mounted on the tilt bed 12 to move the hay bale forward to the static bed 13.

Re claim 10, Graham teaches the hay bale stabilizer (66, 32, or 33) includes a first squeeze bar (72, 73, 68, 69, etc.) for stabilizing the hay bales.

Re claim 11, Graham teaches the hay bale stabilizer (66, 32, or 33) includes a second squeeze bar (72, 73, 68, 69, etc.) for stabilizing the hay bales.

Re claim 12, Graham teaches at least one hydraulic ram (76, 77, 86) for activating the first squeeze bar (72, 73, 68, 69, etc.) and at least one hydraulic ram (76, 77, 86) for activating the second squeeze bar (72, 73, 68, 69, etc.).

While the bale wagon disclosed by Graham does incorporate several of the mechanisms that applicant's device does, applicant's invention discloses a novel method of unloading/stacking that provides significant advantages over Graham. The stabilizing and unloading processes in applicant's device are more efficient and applicant's unloading process allows the user of the device to specify the preferred amount of hay bales to unload.

For a 35 U.S.C. § 102 rejection, it is well established case law that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The stabilizing process in applicant's device is superior in that less force is required to stabilize the hay. In Graham, the hay is stabilized by squeezing an entire tier of hay. Applicant's device stabilizes the hay through squeezing only one bale. Squeezing one bale requires significantly less force exerted by the hydraulic rams than stabilizing an entire tier of hay bales, as the bale wagon in

Graham does (See Graham at col. 6, line 64). Therefore, less power needs to be provided to stabilize the hay.

Furthermore, the stabilizer in Graham does not act as a proxy between the static bed and the tilt bed, as applicant's does. The unloading process of applicant's invention enables the user of the device to specify a preferred number of bales to unload. Applicant's device accomplishes this by utilizing the headache rack to feed the preferred number of hay bales through the stabilizer to the tilt bed. The stabilizer in applicant's invention is in a fixed position and acts as a proxy between the tilt bed and the static bed, while the stabilizer in Graham stabilizes the first tier of bales to form a foundation for successive tiers (See Graham at col. 2, line 6). The bale wagon disclosed by Graham forces the user to unload all the bales in the static bed at once – there is no option for partial unloading. While the static bed in Graham does not need to be full in order to unload, unloading smaller numbers of hay bales at various locations will necessarily require multiple trips, unlike applicant's device.

Applicant has amended independent claims 1 and 14 in order to include the novel proxy functionality of applicant's hay bale stabilizer. The claims, as amended, now include elements not disclosed in Graham. Examiner is respectfully requested to reconsider the rejection of claims 1, 2, and 10-12 in light of these amendments and the foregoing comments.

35 U.S.C. § 103

Claim 3 is rejected under 35 U.S.C. 103(a) under Graham

Examiner has rejected claim 3 as being unpatentable over Graham. In making the rejection, examiner stated:

“Re claim 3, Graham teaches a hydraulic ram 29 but does not mention a second hydraulic ram mounted on the tilt bed to move the hay bale forward to the static bed. However, it is well known that a single hydraulic ram may be replaced by two or more similar hydraulic rams to form an equivalent device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham to have a second hydraulic ram 29 mounted on the tilt bed to move the hay bale forward to the static bed in order to have a backup ram or to reduce the strain by dividing between two rams.”

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103, the examiner must demonstrate that there is a suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine the reference teachings. Furthermore, the prior art references must teach or suggest all of the claimed features. It is well settled law that the prior art itself must provide the motivation for a proposed alteration of a reference. Ex parte Chicago Rawhide Manufacturing Co., 220 U.S.P.Q. 351, (B.O.P.A. 1984). Moreover, the suggestion must be plain and clear or the rejection is untenable. Fromson v. Offset Plate, Inc., 225 U.S.P.Q. 26, 32 (Fed. Cir. 1985); Kimberly-Clark Corp. v. Johnson & Johnson, 223 U.S.P.Q. 603, 610 (Fed. Cir. 1984). The Examiner is not free to pick bits and pieces from the prior art and, with the hindsight benefit of applicants' disclosure, attempt to reconstruct the invention. Orthopedic Equipment, Inc. v. U.S., 217 U.S.P.Q. 193, 199, (Fed. Cir. 1983).

Applicant concedes that using multiple rams instead of one ram in the bale retriever in Graham is obvious under 35 U.S.C. § 103. However, applicant's device is not merely an improvement over Graham. Claim 3, as a dependent

claim of amended independent claim 1, should no longer be rejected under U.S.C. § 103(a) because claim 1 has now been amended to include novel, non-obvious elements, as discussed in the previous section addressing the 35 U.S.C. § 102 rejections.

Claims 4-6 are rejected as being unpatentable over Graham in view of Babb

Examiner has rejected claims 4-6 as being unpatentable over Graham (U.S. 3,478,898) in view of Babb (U.S. 6,478,522). In making the rejection, examiner stated:

“Re claim 4, Graham teaches a hydraulic ram 35 and pulleys 34 mounted on the static bed for slidably moving the headache rack (66, 32, or 33) from the second position to the first position but does not mention a hydraulic winch and cable. Babb teaches (column 4, third paragraph) it is well known to use a hydraulic winch and cable in place of hydraulic cylinders to move items. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham by the general teaching of Babb to have a hydraulic winch and cable mounted on the static bed for slidably moving the headache rack from the second position to the first position as a well known equivalent and along remove the strain on the device caused by lifting the bales by ram 35.

Re claim 5, Graham teaches a corner post 83 disposed at the front end of the static bed.

Re claim 6, Graham teaches static cables disposed between and mounted on the corner post 83 and the hay bale stabilizer, on opposing sides of the static bed.”

Applicant concedes that utilizing a hydraulic winch instead of a hydraulic ram would have been obvious to one skilled in the art. However, as previously stated, applicant's device is not merely an improvement over Graham. Claim 4, as a dependent claim of amended independent claim 1, should no longer be rejected under U.S.C. § 103(a) because claim 1 has now been amended to include novel, non-obvious elements, as discussed in the previous section addressing the 35 U.S.C. § 102 rejections. The same argument applies to the rejection of claims 5 and 6, as all these claims are ultimately dependent upon claim 1.

Claim 9 is rejected under Graham in view of Tilley

Examiner has rejected claim 9 under 35 U.S.C. 102(b) as anticipated by Graham, or alternatively under 35 U.S.C. 103(a) as obvious over Graham in view of Tilley (U.S. 5,478,194). In making the rejection, examiner stated:

Re claim 9, Graham teaches a dolly 24 mounted on the hay engagement portion, wherein the dolly 24 is capable of sliding from the first position to the second position to load and unload hay bales. If it is determined that the item 24 is not a dolly then, Tilley teaches (column 4) use of a pusher (not numbered, no details) to push bales of the tilt bed to make sure the bales are fully transferred to the bed 245. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham to have a pusher (dolly) like item 32 (since design already known) to make sure the bales are fully transferred to the bed 13.

Examiner justifiably doubts that the “pusher” in Graham is a dolly. The dolly in applicant’s device is substantially different from the pusher of Graham’s device. The “pusher”, in Graham appears to function more like a conveyer belt. Furthermore, the pusher is isolated to the tilt bed, unlike the dolly in applicant’s invention which can move to a position proximate to the hay bale stabilizer. It follows that these feature is novel over Graham under 35 U.S.C. § 102. Irregardless of this, claim 9 contains elements not contained in Graham because applicant’s amended independent claim 1 now includes proxy functionality that is not present in Graham, and claim 9 is dependent on claim 1.

Tilley discloses a “push bar” for moving hay bales along a load bed (See Tilley at col. 4, line 36). Applicant believes that this is the portion of Tilley that examiner is referring to, though examiner specified no line number in column 4. This push bar, though not shown or described, performs a similar function as the dolly in applicant’s present invention. Applicant concedes that a similar “push bar” could have been utilized in Graham instead of the pusher. However, applicant’s dolly is utilized differently than in Graham – it feeds the hay to and

from a stabilizer functioning as a proxy between the tilt bed and static bed, as is now stated in amended claim 1. In Graham, the function of the dolly would only be to load. In applicant's device, the dolly is also used to unload hay bales.

Irregardless of this, claim 9 should not be rejected under 35 U.S.C. § 102 or 103 because the amended independent claim 1 now incorporates features that are both novel and non-obvious, and claim 9 is dependent on claim 1.

Claims 14, 16-18 are rejected under 35 U.S.C. § 103(a) over Graham in view of Babb

Examiner rejected claims 14 and 16-18 as being unpatentable over Graham in view of Babb (U.S. 6,478,522). In making the rejection, examiner stated:

Re claim 14, Graham teaches a hay bale retriever/stacker 10, comprising:
a static bed 13, having a front and a rear end;
a tilt bed 12, mounted at the rear end of the static bed;
a hay engagement portion 23, 24, mounted on the tilt bed, for engaging hay bale during retrieval;
a headache rack (66, 32, or 33), slidably mounted on the static bed 13, capable of sliding from a first position proximate to the rear end of the static bed to a second position proximate to the front end of the static bed; and
a hay bale stabilizer (66, 32, or 33) disposed on the static bed proximate to the rear of the static bed to stabilize the hay bale;
at least one hydraulic ram 29 mounted on the tilt bed 12 to move the hay bale forward to the static bed 13.

Graham teaches a hydraulic ram 29 but does not mention a second hydraulic ram mounted on the tilt bed to move the hay bale forward to the static bed. However, it is well known that a single hydraulic ram may be replaced by two or more similar hydraulic rams to form an equivalent device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham to have a second hydraulic ram 29 mounted on the tilt bed to move the hay bale forward to the static bed in order to have a backup ram or to reduce the strain by dividing between two rams.

Graham teaches a hydraulic ram 35 and pulleys 34 mounted on the static bed for slidably moving the headache rack (66, 32, or 33) from the second position to the first position but does not mention a hydraulic winch and cable. Babb teaches (column 4, third paragraph) it is well known to use a hydraulic winch and cable in place of hydraulic cylinders to move items. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Graham by the general teaching of Babb to have a hydraulic winch and cable mounted on the static bed for slidably moving the headache rack from the second position to the first position as a well known equivalent and along remove the strain on the device caused by lifting the bales by ram 35.

Re claim 16, Graham teaches the hay bale stabilizer (66, 32, or 33) includes a first squeeze bar (72, 73, 68, 69, etc.) for stabilizing the hay bales.

Re claim 17, Graham teaches the hay bale stabilizer (66, 32, or 33) includes a second squeeze bar (72, 73, 68, 69, etc.) for stabilizing the hay bales.

Re claim 18, Graham teaches at least one hydraulic ram (76, 77, 86) for activating the first squeeze bar (72, 73, 68, 69, etc.) and at least one hydraulic ram (76, 77, 86) for activating the second squeeze bar (72, 73, 68, 69, etc.).

Applicant again concedes that using multiple rams instead of one ram in the bale retriever in Graham is obvious under 35 U.S.C. § 103. However, applicant's device is not merely an improvement over Graham. Claim 14 should no longer be rejected under U.S.C. § 103(a) because claim 14 has now been amended to include novel, non-obvious elements, as discussed in the previous section addressing the 35 U.S.C. § 102 rejections.

Applicant likewise concedes that substitution of a hydraulic winch for a hydraulic ram in Graham would be an obvious change to Graham. However, applicant persists that his device is novel and non-obvious in that it utilizes its hay bale stabilizer mechanism as a proxy to load and unload hay bales, as has been mentioned previously.

Claim 15 is rejected under 35 U.S.C. § 103(a) over Graham in view of Babb, and further in view of Tilley

The same argument that applied to the 35 U.S.C. § 102 and 103 rejection of claim 9 likewise applies to the present rejection of claim 15. The item in Graham is not a dolly because it appears to function more like a conveyer belt.

Tilley discloses a "push bar" for moving hay bales along a load bed (See Tilley at col. 4, line 36). Applicant believes that this is the portion of Tilley that examiner is referring to, though examiner specified no line number in column 4. This push bar, though not shown or described, performs a similar function as the

dolly in applicant's present invention. Applicant concedes that a similar "push bar" could have been utilized in Graham instead of the pusher. However, applicant's dolly is utilized differently than in Graham – it feeds the hay to and from a stabilizer functioning as a proxy between the tilt bed and static bed, as is now stated in amended claim 14. In Graham, the function of the dolly would only be to load. In applicant's device, the dolly is also used to unload hay bales. Irregardless of this, claim 15 should not be rejected under 35 U.S.C. §103 because the amended independent claim 14 now incorporates features that are both novel and non-obvious, and claim 15 is dependent on claim 14.

In light of applicant's amendments to the claims and foregoing comments, examiner is respectfully requested to reconsider the rejection of claims 14-18 under 35 U.S.C. § 103.

APPENDIX

The following is how the claims should appear after the amendments are made:

1. (currently amended). A hay bale retriever/stacker, comprising:
 - a static bed, having a front end and a rear end;
 - a tilt bed, mounted at the rear end of the static bed;
 - a hay engagement portion, mounted on the tilt bed, for engaging a hay bale during retrieval;
 - a headache rack, slidably mounted on the static bed, capable of sliding from a first position proximate to the rear end of the static bed to a second position proximate to the front end of the static bed; and
 - a hay bale stabilizer disposed on the static bed proximate to the rear end of the static bed to stabilize the hay bale;
 - said hay bale stabilizer capable of being used in conjunction with the headache rack and tilt bed to unload a desired number of hay bales from the static bed to the tilt bed, the hay bale stabilizer acting as a proxy between the static bed and the tilt bed;
 - said hay bale stabilizer capable of being used in conjunction with the headache rack and tilt bed to load hay bales from the tilt bed to the static bed, the hay bale stabilizer acting as a proxy between the static bed and the tilt bed.
- 2 (original). The hay bale retriever/stacker of claim 1, further comprising:
 - at least one hydraulic ram mounted on the tilt bed to move the hay bale forward to the static bed.

3 (original). The hay bale retriever/stacker of claim 2, further comprising a second hydraulic ram mounted on the tilt bed to move the hay bale forward to the static bed.

4 (original). The hay bale retriever/stacker of claim 2, further comprising a hydraulic winch and cable mounted on the static bed for slidably moving the headache rack from the second position to the first position.

5 (original). The hay bale retriever/stacker of claim 4, further comprising a corner post disposed at the front end of the static bed.

6 (original). The hay bale retriever/stacker of claim 5, further comprising static cables disposed between and mounted on the corner post and the hay bale stabilizer, on opposing sides of the static bed.

7 (withdrawn). The hay bale retriever of claim 2, further comprising a hydraulic ram mounted on the static bed, connected to the headache rack for sliding the headache rack from the second position to the first position.

8 (withdrawn). The hay bale retriever of claim 7, further comprising a chain, the chain having one end mounted at an end of the hydraulic ram mounted on the static bed and the other end of the chain connected to the headache rack to slide the headache rack from the second position to the first position.

9 (currently amended). The hay bale retriever/stacker of claim 1, further comprising a dolly mounted on the hay engagement portion, wherein the dolly is capable of sliding from a first position on one end of the tilt bed to a second position located towards the hay stabilizer to load and unload hay bales.

10 (original). The hay bale retriever/stacker of claim 1, wherein the hay bale stabilizer includes a first squeeze bar for stabilizing the hay bales.

11 (original). The hay ~~n~~bale retriever/stacker of claim 10, wherein the hay bale stabilizer includes a second squeeze bar for stabilizing the hay bales.

12 (original). The hay bale stabilizer of claim 11, further comprising at least one hydraulic ram for activation the first squeeze bar and at least one hydraulic ram for activating the second squeeze bar.

13 (withdrawn). The hay bale stabilizer of claim 1, wherein the hay bale stabilizer is a tines stanchion.

14 (currently amended). A hay bale retriever/stacker, comprising:

- a static bed, having a front end and a rear end;

- a tilt bed, pivotally mounted at the rear end of the static bed;

- a hay engagement portion, mounted on the tilt bed, for engaging in a hay bale during retrieval;

- a headache rack, slidably mounted on the static bed, capable of sliding from a first position proximate to the rear end of the static bed to a second position proximate to the front end of the static bed;

- a hay bale stabilizer disposed pm the static bed proximate to the rear end of the static bed to stabilize the hay bale;

- said hay bale stabilizer capable of being used in conjunction with the headache rack and tilt bed to unload a desired number of hay bales from the static bed to the tilt bed, the hay bale stabilizer acting as a proxy between the static bed and the tilt bed;

said hay bale stabilizer capable of being used in conjunction with the headache rack and tilt bed to load hay bales from the tilt bed to the static bed, the hay bale stabilizer acting as a proxy between the static bed and the tilt bed;

a first hydraulic ram mounted on the tilt bed to move the hay bale forward to the static bed;

a second hydraulic ram mounted on the tilt bed, proximate to the first hydraulic ram, to move the hay bale forward to the static bed; and

a hydraulic winch and cable mounted on the static bed for slidably moving the headache rack from the second position to the first position.

15 (original). The hay bale retrieve/stacker of claim 14, further comprising a dolly mounted on the hay engagement portion, wherein the dolly is capable of sliding from the first position to the second position to load and unload hay bales.

16 (original). The hay bale retriever/stacker of claim 14, wherein the hay bale stabilizer includes a first squeeze bar for stabilizing the hay bales.

17 (original). The hay bale retriever/stacker of claim 16, wherein the hay bale stabilizer includes a second squeeze bar for stabilizing the hay bales.

18 (original). The hay bale stabilizer of claim 17, further comprising at least one hydraulic ram for activating the first squeeze bar and at least one hydraulic ram for activating the second squeeze bar.

19 (withdrawn). The hay bale stabilizer of claim 14, wherein the hay bale stabilizer is a tines stanchion.

20 (withdrawn). The hay bale retriever/stacker, comprising:

a static bed, having a front end and a read end;

a tilt bed, pivotally mounted at the rear end of the static bed;

a hay engagement portion, mounted on the tilt bed, for engaging a hay bale during retrieval;

a headache rack, slidably mounted on the static bed, capable of sliding from a first position proximate to the rear end of the static bed to a second position proximate to the front end of the static bed;

a hay bale stabilizer disposed on the static bed proximate to the rear end of the static bed to stabilize the hay bale;

a first hydraulic ram mounted on the tilt bed to move the hay bale forward to the static bed;

a second hydraulic ram mounted on the tilt bed, proximate to the first hydraulic ram, to move the hay bale forward to the static bed;

a hydraulic ram mounted on the static bed, connected to the headache rack for sliding the headache rack from the second position to the first position; and

a chain, the chain having one end mounted at an end of the hydraulic ram mounted on the static bed and the other end of the chain connected to the headache rack to slide the headache rack from the second position to the first position.

21 (withdrawn). The hay bale retrieve/stacker of claim 20, further comprising a dolly mounted on the hay engagement portion, wherein the dolly is capable of sliding from the first position to the second position to load and unload the hay bales.

22 (withdrawn). The hay bale retriever/stacker of claim 20, wherein the hay bale stabilizer includes a first squeeze bar for stabilizing the hay bales.

23 (withdrawn). The hay bale retriever/stacker of claim 22, wherein the hay bale stabilizer includes a second squeeze bar for stabilizing the hay bales.

24 (withdrawn). The hay bale stabilizer of claim 23, further comprising at least one hydraulic ram for activating the first squeeze bar and at least one hydraulic ram for activating the second squeeze bar.

25. (withdrawn). The hay bale stabilizer of claim 20, wherein the hay bale stabilizer is a tines stanchion.

CONCLUSION

In view of the foregoing amendment and remarks, it is believed that this Application is now in condition for allowance. Early and favorable reconsideration is respectfully solicited.

If the Examiner has any questions regarding the foregoing amendment and remarks, or if prosecution of this Application could be furthered by a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney.

Respectfully submitted,

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